



**Working Group
on Electronic Commerce**

Thirty-seventh session
Vienna, 18-29 September 2000

PROVISIONAL AGENDA

1. Election of officers
2. Adoption of the agenda
3. Legal aspects of electronic commerce:
 - Draft uniform rules on electronic signatures
 - Draft guide to enactment of the uniform rules on electronic signatures
 - Possible future work in the field of electronic commerce
4. Other business
5. Adoption of the report

Notes on the provisional agenda

2. The Commission, at its twenty-ninth session (1996), decided to place the issues of digital signatures and certification authorities on its agenda. The Working Group on Electronic Commerce was requested to examine the desirability and feasibility of preparing uniform rules on those topics. It was agreed that the uniform rules to be prepared should deal with such issues as: the legal basis supporting certification processes, including emerging digital authentication and certification technology; the applicability of the certification process; the allocation of risk and liabilities of users, providers and third parties in the context of the use of certification techniques; the specific issues of certification through the use of registries; and incorporation by reference.¹

3. At its thirtieth session (1997), the Commission had before it the report of the Working Group on the work of its thirty-first session (A/CN.9/437). The Working Group indicated to the Commission that it had reached consensus as to the importance of, and the need for, working towards harmonization of law in that area. While no firm decision as

to the form and content of such work had been reached, the Working Group had come to the preliminary conclusion that it was feasible to undertake the preparation of draft uniform rules at least on issues of digital signatures and certification authorities, and possibly on related matters. The Working Group recalled that, alongside digital signatures and certification authorities, future work in the area of electronic commerce might also need to address: issues of technical alternatives to public-key cryptography; general issues of functions performed by third-party service providers; and electronic contracting (A/CN.9/437, paras. 156-157). The Commission endorsed the conclusions reached by the Working Group, and entrusted the Working Group with the preparation of uniform rules on the legal issues of digital signatures and certification authorities (hereinafter referred to as “the Uniform Rules”).

4. With respect to the exact scope and form of the Uniform Rules, the Commission generally agreed that no decision could be made at this early stage of the process. It was felt that, while the Working Group might appropriately focus its attention on the issues of digital signatures in view of the apparently predominant role played by public-key cryptography in the emerging electronic-commerce practice, the Uniform Rules should be consistent with the media-neutral approach taken in the UNCITRAL Model Law on Electronic Commerce (the Model Law). Thus, the Uniform Rules should not discourage the use of other authentication techniques. Moreover, in dealing with public-key cryptography, the Uniform Rules might need to accommodate various levels of security and to recognize the various legal effects and levels of liability corresponding to the various types of services being provided in the context of digital signatures. With respect to certification authorities, while the value of market-driven standards was recognized by the Commission, it was widely felt that the Working Group might appropriately envisage the establishment of a minimum set of standards to be met by certification authorities, particularly where cross-border certification was sought.²

5. The Working Group began the preparation of the Uniform Rules at its thirty-second session on the basis of a note prepared by the Secretariat (A/CN.9/WG.IV/WP.73).

6. At its thirty-first session (1998), the Commission had before it the report of the Working Group on the work of its thirty-second session (A/CN.9/446). It was noted that the Working Group, throughout its thirty-first and thirty-second sessions, had experienced manifest difficulties in reaching a common understanding of the new legal issues that arose from the increased use of digital and other electronic signatures. It was also noted that a consensus was still to be found as to how those issues might be addressed in an internationally acceptable legal framework. However, it was generally felt by the Commission that the progress realized so far indicated that the draft Uniform Rules on Electronic Signatures were progressively being shaped into a workable structure.

7. The Commission reaffirmed the decision made at its thirtieth session as to the feasibility of preparing such Uniform Rules and expressed its confidence that more progress could be accomplished by the Working Group at its thirty-third session on the basis of the revised draft prepared by the Secretariat (A/CN.9/WG.IV/WP.76). In the context of that discussion, the Commission noted with satisfaction that the Working Group had become generally recognized as a particularly important international forum for the exchange of views regarding the legal issues of electronic commerce and for the preparation of solutions to those issues.³

8. The Working Group continued revision of the Uniform Rules at its thirty-third session (1998) and thirty-fourth session (1999) on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP.76 and A/CN.9/WG.IV/WP.79 and 80). The reports of the sessions are contained in documents A/CN.9/454 and 457.

9. At its thirty-second session (1999), the Commission had before it the report of the Working Group on the work of its thirty-third and thirty-fourth sessions (A/CN.9/454 and 457). The Commission expressed its appreciation for the efforts accomplished by the Working Group in its preparation of draft uniform rules on electronic signatures. While it was generally agreed that significant progress had been made at those sessions in the understanding of the legal issues of electronic signatures, it was also felt that the Working Group had been faced with difficulties in the building of a consensus as to the legislative policy on which the uniform rules should be based.

10. A view was expressed that the approach currently taken by the Working Group did not sufficiently reflect the business need for flexibility in the use of electronic signatures and other authentication techniques. As currently envisaged by the Working Group, the Uniform Rules placed excessive emphasis on digital signature techniques and, within the sphere of digital signatures, on a specific application involving third-party certification. Accordingly, it was suggested that work on electronic signatures by the Working Group should either be limited to the legal issues of cross-border certification or be postponed altogether until market practices were better established. A related view expressed was that, for the purposes of international trade, most of the legal issues arising from the use of electronic signatures had already been solved in the UNCITRAL Model Law on Electronic Commerce. While regulation dealing with certain uses of electronic signatures might be needed outside the scope of commercial law, the Working Group should not become involved in any such regulatory activity.

11. The widely prevailing view was that the Working Group should pursue its task on the basis of its original mandate (see above, paras. 2 and 3). With respect to the need for uniform rules on electronic signatures, it was explained that, in many countries, guidance from UNCITRAL was expected by governmental and legislative authorities that were in the process of preparing legislation on electronic signature issues, including the establishment of public key infrastructures (PKI) or other projects on closely related matters (see A/CN.9/457, para. 16). As to the decision made by the Working Group to focus on PKI issues and PKI terminology, it was recalled that the interplay of relationships between three distinct types of parties (i.e., key holders, certification authorities and relying parties) corresponded to one possible PKI model, but that other models were conceivable, e.g., where no independent certification authority was involved. One of the main benefits to be drawn from focusing on PKI issues was to facilitate the structuring of the Uniform Rules by reference to three functions (or roles) with respect to key pairs, namely, the key issuer (or subscriber) function, the certification function, and the relying function. It was generally agreed that those three functions were common to all PKI models. It was also agreed that those three functions should be dealt with irrespective of whether they were in fact served by three separate entities or whether two of those functions were served by the same person (e.g., where the certification authority was also a relying party). In addition, it was widely felt that focusing on the functions typical of PKI and not on any specific model might make it easier to develop a fully media-neutral rule at a later stage (*ibid.*, para. 68).

12. After discussion, the Commission reaffirmed its earlier decisions as to the feasibility of preparing such uniform rules (see above, paras. 3 and 7) and expressed its confidence that more progress could be accomplished by the Working Group at its forthcoming sessions.⁴

13. The Working Group continued revision of the Uniform Rules at its thirty-fifth (September 1999) and thirty-sixth (February 2000) sessions on the basis of notes prepared by the Secretariat (A/CN.9/WG.IV/WP.82 and WP.84). The reports of those two sessions are contained in documents A/CN.9/465 and 467.

14. At its thirty-third session (New York, 12 June - 7 July 2000), the Commission noted that the Working Group, at its thirty-sixth session, had adopted the text of draft articles 1 and 3 to 12 of the

Uniform Rules. The view was expressed that some issues remained to be clarified as a result of the deletion from the draft Uniform Rules of the notion of “enhanced electronic signature”. It was stated that, depending on the decision to be made by the Working Group with respect to draft articles 2 and 13, the remainder of the draft provisions might need to be revisited to avoid creating a situation where the standard set forth by the Uniform Rules would apply equally to electronic signatures that ensured a high level of security and to low-value certificates that might be used in the context of electronic communications that were not intended to carry significant legal effect.

15. After discussion, the Commission expressed its appreciation for the efforts accomplished by the Working Group and the progress achieved in the preparation of the draft Uniform Rules. The Working Group was urged to complete its work with respect to the draft Uniform Rules at its thirty-seventh session, and to review the draft guide to enactment to be prepared by the Secretariat.

16. The Working Group is composed of all States members of the Commission. These are:

Algeria, Argentina, Australia, Austria, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, China, Colombia, Egypt, Fiji, Finland, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Nigeria, Paraguay, Romania, Russian Federation, Singapore, Spain, Sudan, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Item 1. Election of officers

17. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 3. Legal aspects of electronic commerce: draft uniform rules on electronic signatures

18. The Working Group will have before it a set of notes by the Secretariat containing: revised articles 1 to 13 of draft Uniform Rules on electronic signatures (A/CN.9/WG.IV/WP.84); and a draft guide to enforcement of the Uniform Rules (A/CN.9/WG.IV/WP.86 and Add.1). The Working Group may wish to use these notes as a basis for its deliberations.

19. The following documents will be made available at the session:

- (a) Report of the Working Group on Electronic Commerce on the work of its thirty-sixth session (A/CN.9/467);
- (b) Report of the Working Group on Electronic Commerce on the work of its thirty-fifth session (A/CN.9/465);
- (c) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.82);
- (d) Report of the Working Group on Electronic Commerce on the work of its thirty-fourth session (A/CN.9/457);
- (e) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.80);
- (f) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.79);
- (g) Report of the Working Group on Electronic Commerce on the work of its thirty-third session (A/CN.9/454);
- (h) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.76);
- (i) Report of the Working Group on Electronic Commerce on the work of its thirty- session (A/CN.9/446);
- (j) Draft Uniform Rules on Electronic Signatures: Note by the Secretariat (A/CN.9/WG.IV/WP.73);
- (k) Report of the Working Group on Electronic Commerce on the work of its thirty-first session (A/CN.9/437);
- (l) Planning of future work on electronic commerce: digital signatures, certification authorities and related legal issues: Note by the Secretariat (A/CN.9/WG.IV/WP.71); and
- (m) UNCITRAL Model Law on Electronic Commerce with Guide to Enactment (1996).

Item 5. Adoption of the report

17. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fourth session of the Commission (to be held from 7 to 25 May 2001 at Vienna).

Meetings

18. The session of the Working Group will take place from 18 to 29 September 2000 at the Vienna International Centre. There will be 8 working days available for consideration of the agenda items at the session. No meeting will be scheduled for Thursday, 28 September, in order to allow for the preparation of the draft report of the session. Meeting hours will be from 09:30 to 12:30 and from 14:00 to 17:00, except on Monday, 18 September 2000, when the session will commence at 10:00 a.m.

* * *

^{1/} Official Records of the General Assembly, Fifty-first Session, Supplement No. 17 (A/51/17), paras. 223-224.

^{2/} Ibid., Fifty-second Session, Supplement No. 17 (A/52/17), paras. 249-251.

^{3/} Ibid., Fifty-third Session, Supplement No. 17 (A/53/17), paras. 207-211.

^{4/} Ibid., Fifty-fourth Session, Supplement No. 17 (A/54/17), paras. 308-314.